

1947.

File No. O University  
47



Legal DEPARTMENT  
A BRANCH

Subject:— Opinions under the Bombay  
University Act, 1928

P 2hE

File No. O University / 47  
Ed. Sectt. Slip 24 B c.

395-A

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Bombay University Act.  
1928

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(ii) whether it would be competent to establish a University in the Province having territorial jurisdiction overlapping the territories included within the jurisdiction of another statutory University in another Province.  
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the Educational Institutions in  
Sind and these affiliations  
would continue to be  
valid until an express  
provision is made in  
the Sind University  
Act, prohibiting the  
operation of the Bom  
University in Sind

33-34

Mjr/8/5

5 Copies.

Office of the R.L.A.

The first question for R.L.A's consideration is whether the Provincial Government can establish a University in the Province with territorial jurisdiction, which will overlap territories included within the jurisdiction of any other University in the same Province. Under the Government of India Act, 1935, Provincial Legislatures are given exclusive power to make laws for the Province or any part thereof with respect to matters enumerated in List II of the Seventh Schedule. In virtue of entry 17 in List II as amended by the India and Burma (Miscellaneous Amendment) Act, 1940, Universities other than those specified in paragraph 13 of List I is a subject within the exclusive competence of the Provincial Legislature without any limitations on its powers and, therefore, nothing can prevent the Provincial Legislature from enacting a law for the establishment of a University overlapping the territorial jurisdiction of any other University in the Province. But although such wide powers are given to a Provincial Legislature, it will no doubt be that the Universities established in the same Province with concurrent jurisdiction either in respect of territory or in respect of alumni do not in their working <sup>clash</sup> clash with each other in respect of the objects for which they are established. To secure this end, a provision is made in some of the University Acts defining the limits of the territorial jurisdiction of the Universities or debarring the Universities from affiliating colleges within the limits of . . . other Universities or enabling Universities to admit colleges or institutions situated only in particular areas (vide section 5 of the Delhi University Act, 1922, section 24 of the Agra University Act, 1926, section 15 of the Benares Hindu University Act, 1915, and section 12A of the Aligarh Muslim University Act, 1920).

2. The next question for consideration is whether it would be competent to establish a University in the Province having territorial jurisdiction overlapping the territories included within the jurisdiction of another statutory University in another Province. Although Provinces do not ordinarily possess authority to make

legislation of an extra-territorial character, there may not be objection for such legislation of a permissive character merely enabling educational institutions outside Bombay Province to seek affiliation or association, so long as their own laws do not forbid it. (see the Provision made in section 1(2) of the Sind University Act, 1947).

3. The third question for consideration is whether it is incumbent on Government to consult the Bombay University before statutory recognition is granted to a separate university with overlapping territorial jurisdiction. As stated above, there is no legal objection to establishing a separate university with overlapping territorial jurisdiction provided it possesses characteristics to distinguish it from the already existing university. The Bombay university Act, 1928 does not prohibit the incorporation of another university for purposes of learning. Consequently, no consultation of the Bombay University appears necessary in law before incorporating another university. But such consultation would appear desirable in as much as the working and the administration of the Bombay University would be affected.

Ed/-

O.C.

Remembrancer of Legal Affairs.

U.R. to Education and Industries Department, No 6416

dated the 20th June 1947

Mjr/8/5

4 Copies.

Office of the R.L.A.

The main question referred to the R.L.A. for advice is presumably that of the continuation of affiliation granted by the Bombay University to the colleges in Sind, after the whole of the Sind University Act, 1947, comes into force. At present they are affiliated either permanently or temporarily to the Bombay University in accordance with the provisions of the Bombay University ~~xxxxxxx~~ Act, 1928. Section 24 of the Government of India (Constitution of Sind) Order, 1936 provided that the provisions of that order shall not be deemed to have effected any change in the territorial application of any enactment notwithstanding that that enactment is expressed to apply or extend to the territories for the time being under a particular administration. The Bombay University Act, 1928, therefore, continued to apply to Sind and by reason of their powers under entry No. 17 in List II of Seventh Schedule to the Government of India Act, 1935, it was competent to the Province of Sind to make legislation affecting the Bombay University Act in so far as it applied to that Province. But in the Sind University Act, 1947, no express provision is made for the repeal in whole or in part of the Bombay University, ~~Act~~, 1928 in its application to Sind. Ordinarily, the affiliation granted to the colleges in Sind would thus have remained unaffected. On general principles also there would be no objection to a University in any Province permitting affiliation to educational institutions outside that Province. In fact the Sind University Act, section 1(2), itself permits educational institutions in an Indian State or in any part of British India to apply to the Senate of the Sind University for being admitted to its privileges and allows the Senate in its discretion to admit such institutions to the privileges of the University.

Although such permissive legislation of an extra-territorial

kind may be valid, no Province can pass legislation affecting a University in another Province to sever its connections with the educational institutions in that Province. The utmost that the Provincial legislation can do is to forbid institutions within its territory to seek affiliation outside, on pain of a penalty, if necessary. We have, therefore, to see whether there is any effective provision in the Sind University Act, 1947 which would discontinue the permanent affiliation granted to certain colleges in Sind by the University of Bombay. The relevant sections of the Sind University Act, 1947 are sections 30, 35 and 43 which read as follows;

"30. Any College affiliated to the University of Bombay immediately before the commencement of this Act may continue to exercise the rights conferred upon it by such affiliation, save in so far as such rights may be withdrawn, restricted or modified in the exercise of any power conferred by this Act.

35. Notwithstanding anything contained in any law for the time being in force, no educational institution in the province of Sind, shall after the commencement of the Act be affiliated to or associated in any way with, or to seek admission to any privilege of, any university in British India or an Indian State, other than the university of Sind; and any such privileges granted by such other university to any educational institution in this province prior to the commencement of this Act shall not be continued by the Sind University.

43 Subject to the provisions of the Statutes, every graduate of an Indian or a foreign University recognised by the Senate for this purpose who is born or domiciled in the Province shall be entitled to be registered under this Act;

Provided that if any College in the Province declines to be affiliated to the University any person graduating from such College after the commencement of this Act shall not be entitled to be so registered."

Sections 30 and 35 must necessarily be read together. Section 35 is in two parts. The first part obviously applies to future affiliation, and the second affects existing privileges. The words "associated in any way with" occurring in the first part are no doubt quite wide; but they refer in the main to the future. It is

impossible to construe the first part as affecting existing affiliations as in that case the second part would become practically meaningless. The marginal note upon which now-a-days the eye of the Legislature is deemed to rest and which can be looked to in cases of doubt supports this view. There is nothing in the second part of section 35 which would over-ride the continuation of rights permitted by section 30. In the first place, the second part of section 35 uses the word "privileges" whereas section 30 speaks of rights. Secondly, the wording of that part is not quite happy. For, it says that the privileges granted by such other University shall not be continued by the Sind University. No question of the Sind University continuing the privileges of affiliation etc. granted by the Bombay University can possibly arise. For, it is not competent to the Sind University to take away those privileges by their own fiat. The wording, therefore, is not adequate to withdraw the affiliation granted to the Sind Colleges by the University of Bombay. It must also be emphasised that nowhere in the Act is any provision made to affiliate by the Act itself to the Sind University colleges which are now affiliated to the Bombay University. In this respect the Sind University Act differs from the provisions made by the Patna University Act, 1917, section 11, ~~made by the Act~~ Whereunder the privileges granted by other Universities were withdrawn on the commencement of the Act and privileges under the new Patna University Act were immediately granted also by the Act. Section 5 of the University of Saugar Act, 1946 also follows the same policy. It does not, therefore, appear that the policy of the Sind University Act, as manifested in sections 30 and 35, is to withdraw existing affiliations to the Bombay University and to attach such colleges to the Sind University. Section 43 further makes it clear that the Act contemplates that colleges in the Province of Sind

by decline to be affiliated to the Sind University. Having regard to all these considerations I am of opinion that section 35 does not contain anything which would affect the continuation of the rights permitted by section 30. Even otherwise, section 35 cannot be said to over-ride section 30. The usual rule of construction is that when a general intention is expressed as in section 35 and also a particular intention as in section 30 which is incompatible with the general one, the particular intention is considered as an exception to the general one. Even when the latter or latter part of the enactment is in the negative, it is reconcilable with the earlier one by so treating it. The rule is that the general clause cannot control the particular enactment however comprehensive it may be. The clear intention of section 30 is to continue the affiliations to the University of Bombay, and as section 35 does not contain anything which would result in the withdrawal, restriction or modification of the rights granted by such affiliations, its general terms would not be sufficient to over-ride section 30 and thus to nullify it. In my opinion, therefore, the actual provisions of the Sind University Act have not succeeded in withdrawing existing permanent affiliations of the Sind colleges to the Bombay University.

2. Affiliations fresh or in renewal to be granted hereafter by the Bombay University stand on a different footing. Section 35 would be applicable to such affiliations. It would not be competent to the colleges in Sind to seek hereafter fresh affiliation or affiliation in renewal to the Bombay University. The saving in section 30 would not be of any assistance in this behalf.

3. Section 4A of the Bombay University Act permits the exercise of powers conferred by that Act in territories as may from time to time be notified by the Provincial Government. Now that the Province of Sind has exercise.

its power to legislate in respect of its own University, it is a matter of policy for the Government of Bombay whether Sind should be one of the other territories under section 4A so as to permit affiliations in the future. A notification of this kind would necessarily conflict with the policy of section 35 of the Sind University Act and might put the educational institutions seeking affiliation in a difficult situation.

4. It is not possible to indicate in what manner the Bombay University Act requires amendment by reason of the Sind University Act until Government's decisions on the question of general policy are made known.

Sd/-

O.C.

Remembrancer of Legal Affairs

U.R. to E. & I. Department, No 6402, dated the 20th June 1947

Mjr/8/5

4 C.

In his last opinion No. 7724, dated 25-7-1947 the R.L.A. has opined that the notification issued by Government including the Province of Sind within the territorial limits of the Bombay University is still in force. The Joint Secretary, E. & I Department desires to know whether in view of that opinion the position in respect of fresh affiliation or affiliations in renewal is different from what was stated in paragraph 2 of the R.L.A's opinion dated 2-6-1947.

After considering the provisions of sections 30 and 35 of the Sind University Act, 1947, the R.L.A. in his opinion No. 6402 dated 20-6-1947 opined:

"Affiliations fresh or in renewal to be granted hereafter by the Bombay University stand on a different footing. Section 35 would be applicable to such affiliations. It would not be competent to the colleges in Sind to seek hereafter fresh affiliation or affiliation in renewal to the Bombay University. The saving in section 30 would not be of any assistance in this behalf."

The legal position as stated above would remain unaffected by the notification issued by Government under section 4-A of the Bombay University Act, 1928, including the Province of Sind within the territorial limits of the Bombay University, when it is by this notification the Bombay University got jurisdiction to operate in Sind.

Sd/-

O.C.

Remembrancer of Legal Affairs.

U.R. to E. & I.D. , No. 7899 , dated the 31st July 1947

Mjr/8/5

4 C.

In exercise of the powers conferred by section 4A of the Bombay University Act, 1928, the Government of Bombay by its Notification No.4274-II, dated the 1st April 1936 was pleased to direct that with effect from 1st April 1936, the Province of Sind should be included within the territorial limits of the University of Bombay . The question raised for the consideration of the Remembrancer of Legal Affairs is whether that order is still in force.

Section 24 of the Government of India (Constitution of Sind) Order, 1936, provides:-

"The provisions of this Order shall not be deemed to have effected any change in the territorial application of any enactment, notwithstanding that the enactment is expressed to apply or extend to the territories for the time being under a particular administration."

Under the Bombay University Act, 1928, the Bombay University has been incorporated having Jurisdiction over the territorial limits as defined in section 4A.

Consequently that Act not being an enactment expressed to apply to the Bombay Presidency could not, by virtue of section 24 of the Government of India (Constitution of Sind) Order, 1936, only, have given jurisdiction to the Bombay University over the territory of Sind Province. It was for this reason a separate notification dated the 1st April 1936, was issued by the Bombay Government under section 4A of the Bombay University Act, including the Province of Sind within the territorial limits of the University of Bombay.

Section 4A of the Bombay University Act, 1928, empowers the Bombay Government to include within the territorial limits of the Bombay University such Indian states and other territories as may from time to time be notified by it in the official Gazette. The notification dated the 1st April 1936, including the Province of Sind within the territorial limits of the Bombay University was validly issued by the Bombay Government and appears to be still in force.

Sd/-  
O.C.  
Remembrancer of Legal Affairs.

U.R. to E. & I Deptt., No. 7724 dated the 25th July 1947

Mr/8/5  
4Copies.

R.I.No. 8009 dated 7-7-47

Submitted.

This case also pertains to B Branch but as it is marked to A, it<sup>s</sup> noted on.

2. The Registrar of the Bombay University, in his letter at p. 1 ante, states that he is directed by the Vice-Chancellor to invite the attention of Government to the necessity of passing an Ordinance to the effect that any college in the Province of Sind which, before the passing of the Sind University Act, was affiliated to this University, shall on its being affiliated by the Sind University, cease ipso facto to be affiliated to this University. He considers that this Ordinance is necessary to prevent a College in Sind from continuing to be affiliated both to the Sind University and the Bombay University. Joint Secy., E.D. states "I cannot however see the possibility that a college affiliated to Sind University would care to exercise any rights in connection with its (legally) continued affiliation to Bombay University or try to fulfil obligations attaching to such affiliation. Therefore the need for legislation by Ordinance is not apparent." The R.L.A. is requested to advise in the matter.

Mjr/8/5

4 Copies.

Office of the R.L.A.

The attention of the Education and Industries Department is invited to paragraph 4 of R.L.A's U.R. to the Advocate General, No. 2487, dated the 1st April 1944, forwarded with R.L.A's U.R. to E.D. No. 2677, dated 8-4-1944. In view of the position explained therein, no recourse to legislation is necessary.

Sd/-

O.C.

Remembrancer of Legal Affairs.

L.R. to E. & I.D. No. 8069 dated the 6th August 1947

Mjr/ 9/6

4 Copies

Dr. Cheema was a member of the Senate of the Bombay University by virtue of his office as Director of Agriculture, Bombay. He has now retired from service and it is proposed to appoint Dr. Uppal, Director of Agriculture (Research and Education) in place of Dr. Cheema on the University Senate. It appears that the post of Director of Agriculture, Bombay, no longer exists but some new posts of Director of Agriculture under various designations have been created. They are designated as Director of Agriculture (Research and Education), Director of Agriculture (Extension and ~~Rural~~ Rural Development) etc. Joint Secretary, E.&I. Deptt. observes:

"Surely there is a Director; in fact there are more than one and it should be open for Government to designate one for the purposes of Bombay University." The R.L.A. is requested to advise.

2. Section 8 of the Bombay University Act, 1928, provides that the Senate shall consist of the Fellows of the University (ex officio and ordinary). Under section 13(1) the Director of Agriculture, Bombay is one of the ex officio fellows of the Senate. The post of Director of Agriculture, Bombay, does not appear to be synonymous with the post of Director of Agriculture (Research and Education). There is no provision in the Act empowering Government to designate any post as equivalent to a post the holder of which is an ex officio fellow. The Director of Agriculture was the one officer of that designation known to the law as contained in ~~xxx~~ the Bombay University Act, 1928. We cannot, therefore, substitute for the entry in section 13(1) B(v) one of the many different kinds of Directors now created by Government. Consequently it would not be legally feasible for Government to designate one of the Directors of Agriculture for the purpose of the Bombay University Act. It appears that the Act will have to be amended.

Sd/- 16-9-

O.C.

Remembrancer of Legal Affairs

U.R. to E. & I. Deptt., No 9290 dated the 17th Sept. 1947

Mjr/9/5

4 C.

The question raised for the consideration of the R.L.A's is whether colleges in Sind can be affiliated to the Bombay University after the 15th August 1947 .

Section 4 A of the Bombay University Act, 1928, provides that the territorial limits within which the powers conferred upon the University by this Act shall be exercised shall comprise the whole of the Bombay Presidency (excluding Aden) and such Indian States and other territories as may, from time to time be notified in this behalf by the Provincial Government in the Official Gazette. "Bombay Presidency" included Sind India (Constitution of Sind) orders, 1936, provides:-

"The provision of this Order shall not be deemed to have effected any change in the territorial application of any enactment, notwithstanding that the enactment is expressed to apply or extend to territories for the time being under ~~xxxxxx~~ particular administration.

It appears that a question arose in 1936 whether by virtue of section 24 of the Government of India (Constitution of Sind) Order, the Bombay University Act, 1928, would automatically apply to Sind after separation or whether a notification would be necessary under section 4A of the Bombay University Act, 1928. On view was that the Bombay University Act would automatically apply to Sind because it was an Act expressed to apply or extend to the Bombay Presidency which included Sind and it was not adapted by the Adaptation Order so as to exclude the representation of Sind on the senate (see clauses (j) and (o) of section 13(1)-II(A) and the Explanation (1) to the proviso thereto). The other view was that a notification under section 4A would be necessary because the Act not being an enactment expressed to apply to the Bombay Presidency would not, by virtue of section 24 of the Government of India (Constitution of Sind) Order, 1936 only give jurisdiction to the Bombay University over the territory of Sind

in view of this doubtful position the B.L.A in ~~the~~ his opinion No. 573, dated 30th January 1936 advised that to avoid any legal difficulty care must be taken to issue the notification on the day on which Sind was separated from the Presidency of Bombay. Accordingly a notification No. 4274-II dated 1st April 1936 was issued directing that with effect from 1st April 1936 the Province of Sind should be included within the territorial limits of the University of Bombay. Assuming that the University of Bombay was competent to operate in Sind either by virtue of section 24 of the Government of India (Constitution of Sind) Order, 1936 or of the notification issued under section 4<sup>th</sup> of the Bombay University Act, 1928 or of ~~xx~~ both, the question for consideration is what is the legal position after the 15th August 1947.

The Government of India (Constitution Of Sind) Order, 1936 was issued under section 289(2) of the Government of India Act, 1935. By the India (Provisional Constitution) Order, 1947 section 289 of the Government of India Act, 1935 is omitted and by virtue of para. 5 of ~~India (Provisional Constitution) Order, 1947~~ That Order the Government of India (Constitution of Sind) Order, 1936 which is an instrument within the meaning of section 31 of the Interpretation Act, has lapsed. Sind) Order, 1936. Para 4(1) of the India (Adaptation of Existing Indian Laws) Order, 1947 provides:

"Where an existing Indian law contains a provision defining the territories to which the law extends, or a provision referring to the territories which are within the scope of that provision, that provision shall be so adapted as to exclude any territories which on the appointed day are not to form part of the territories of the Dominion of India."

Both Sind and Bombay were within the scope of the provision of the Bombay University Act, 1928 read with the Government of India (Constitution of Sind) Order. Consequently that

Act will have now to be so adapted as to exclude Sind. It follows, therefore, that the Bombay University Act is no longer operative in Sind after the 15th August 1947 independently of the notification of 1936 issued under section 4A.

The next point for consideration is whether the Bombay University Act, 1928 is operative in notification of 1936. Section 4A of the Bombay University Act, 1928, provide that the territorial limits within which the powers conferred upon the University by this Act shall be exercised shall comprise the whole of the Bombay Presidency (excluding Aden) and such Indian States and other territories as may from time to time be notified in this behalf by the Provincial Government in the Bombay Government Gazette. The notification No. 4271-II dated 1st April 1936 was in fact issued by the Provincial Government. Section 4A would be a provision within the meaning of ~~para~~ paragraph 4(1) of the India (Adaptation of Existing Indian Laws) Order, 1947, "referring to the territories which are within the scope of that provision"; and, therefore, that provision would have to be so adapted as to exclude any territories which on the appointed day are not to form part of the territories of the Dominion of India. Consequently Sind would be excluded from the other territories which section 4A has in view, and it follows, therefore, that the notification under section 4A extending the limits of the Bombay University to Sind would cease to have any force. By the India (Provisional Constitution) Order, 1947, sub-section (1) of section 99 of the Government of India Act has been amended by substituting the words "(including laws having extra territorial operation) for the whole or any part of the Dominion" for the original words "for the whole or any part of British India or for any Federated State". This

amendment would appear by implication to exclude the power of the Provincial Legislature to make laws having extra territorial operation: (cf. Governor General in Council, v. Raleigh Investment Co. Ltd.,) Federal Court Reports, 1944 Vol VI p. 229). On both these grounds it would have to be held that the notification of the year 1936 has ceased to be operative. The last approach to the question is on the basis of the general principles of International Law. The relevant principle can be stated in the following words taken from Cooley's Constitutional Limitations Vol. I p. 251-253;

"Though a Corporation created by or under the laws of one State has, in strictness, no extra territorial life or authority, and cannot of right insist upon extending its operation within the limits of another, yet this will be suffered without objection where no local policy forbids".

The Bombay University is a corporation created by the Bombay University Act, 1928. Since 15th August the Dominions of India and Pakistan have become independent States. The Bombay University cannot, therefore, extend its operation in Sind after the 15th August of 1947 if the policy of the Sind Government forbids it to do so. The policy of the Sind Government, as expressed in section 35 of the Sind University Act, is opposed to the affiliation of any educational institutions in the province of Sind to any University other than the University of Sind after the commencement of that Act. subject to the continuation of existing permanent affiliations which are covered by section 30 of the Sind University Act, it would, therefore, seem that no fresh affiliation of any educational institutions in the Province of Sind to the Bombay University would be permissible after the 15th of August on the basis of the extra territorial operation of a corporation. In short, fresh affiliations of educational institutions in Sind to the Bombay University would

not be legally feasible after the 15th of August 1947

Sd/-  
9/10

O.C.

Remembrancer of Legal Affairs.

U.R. to E. & I.D. 9855, dated the 13th October 1947

Mjr/9/5

4 C.

Office of the R.L.A.Statement of the Case.

After considering the provisions of sections 30 and 35 of the Sind University Act, 1927, the R.L.A. in para p. 35-39 ante of his opinion No. 6402, dated 20-6-1947 opined:

"Affiliations fresh or in renewal to be granted hereafter by the Bombay University stand on a different footing. Section 35 would be applicable to such affiliations. It would not be competent to the colleges in Sind to seek hereafter fresh affiliation or affiliation in renewal to the Bombay University. The saving in section 30 would not be of any assistance in this behalf.

slip

In his last opinion No 7724, dated 25-7-1947 the R.L. has opined that the notification issued by Government including the province of Sind withing the territorial limits of the Bombay University is still in force.

The Joint Secretary, E.&L. Department desires to know whether in view of that opinion the position in respect of fresh affiliation or affiliations in renewal is different from what was stated in paragraph 2 of the R.L.A's opinion dated 20-9-1947 .

p. 49 ante.

The legal position as stated in para 2 of the R.L.A's opinion No 6402, dated 20-6-47 would remain unaffected by the notification issued by Government under section 4-A of the Bombay University Act, 1928, including the Province of Sind within the territorial limits of the Bombay University, when it is by this notification that the Bombay University got jurisdiction to operate in Sind (cf. R.L.A's No.7899, dated 31st July 1947 ).

51 ante

H.P.M. doubts whether the the view tkane in R.L.A's opinion No. 7899, dated 31st July 1947 is correct and considers that the Bombay University can grant affiliation to the colleges in Sind till the 15th August 1947. As the H.P.M. desires that the Advocate General should be consulted in the matter, he is requested to favour Government wirh his opinion very urgently

Sd/-

O.C.

Remembrancer of Legal Affairs.

U.R. to the Advocate General, Bombay, No. 8229 dated 11/8/ Mjr/9/5

45C.

ADVOCATE GENERAL'S CHAMBERS,  
HIGH COURT  
Bombay, 12th August 1947

H.R..to the Advocate General, Bombay  
No. 8229 dated the 11th August 1947.

Subject:- SIND UNIVERSITY ACT, 1947

O P I N I O N

There being a Notification duly issued under Section 4-A of the Bombay University Act applying to Sind, the Bombay University can affiliate colleges in Sind. That power has not been in any way affected by the Sind University Act.

Section 30 and 35 of the latter act are somewhat inconsistent. The latter, which I understand is now in force, does preclude colleges from applying to any University other than the Sind University, for affiliation. If they do they may be liable to penalty, e.g. may be refused affiliation by the said University. But the Section does not affect the Bombay University's powers. Whether after the 15th August those powers can be exercised is a different matter.

Whether the undoubted powers of the Bombay University--- should be exercised is a matter of policy.

Sd/-  
C.K. Dafhtary.  
Advocate General.

Mjr/9/5

4 C.

Office of the R.L.A.

The Advocate General, Bombay, was consulted. A copy of his opinion is appended.

Sd/- D.V.Vyas

O.C.

Remembrancer of Legal Affairs.

J.R. to S. & I.D. No. 2404-A dated the 14th August 1947

Mjr/9/5

S C.

ADVOCATE GENERAL'S CHAMBERS;  
HIGH COURT,

Bombay, 12th August 1947

U.R. to the Advocate General, Bombay  
No. 8229 dated the 11th August 1947  
-----Subject:- SIND UNIVERSITY ACT, 1947O P I N I O N .

There being a Notification duly issued under Section 4-A of the Bombay University Act applying to Sind, the Bombay University can affiliate colleges in Sind. That power has not been in any way affected by the Sind University Act.

Section 30 and 35 of the latter Act are somewhat inconsistent. The latter, which I understand is now in force, does preclude colleges from applying to any University other than the Sind University, for affiliation. If they do they may be liable to penalty, e.g. may be refused affiliation by the said University. But the Section does not affect the Bombay University's powers. Whether after the 15th August those powers can be exercised is a different matter.

Whether the undoubted powers of the Bombay University should be exercised is a matter of policy.

Sd/- C.K. Daphtary

Advocate General

Mjr/8/5

4 Copies.

Under section 4(A) of the Bombay University Act, the territorial limits within which the powers conferred upon the University by this Act, shall be exercised, shall comprise of the whole of the Bombay Presidency. Bombay Presidency included Sind prior to its separation and even after its separation, section 4(A) was not adapted to limit the territorial limits of the University of Bombay to the Province of Bombay only. It is true that after the 16th of August, the Bombay University Act ceased to apply to Sind and the Notification issued under section 4(A) of the Act has lapsed and today the territorial jurisdiction of the Bombay University does not include Sind. However, the Act which in section 4(A) indicated the territorial jurisdiction, does not expressly prohibit, as some other University Acts do, the extension of its operations by the Bombay University outside the jurisdiction as indicated by section 4(A) .

Under clause 12 of the India (Adaptation of Existing Indian Laws) Order, 1947, the provisions of this Order shall not render invalid anything done before the appointed date under an existing Indian Law. This provision clearly saves the existing affiliations to the Bombay University of institutions in Sind. As observed by Prof. Beale, the determination of powers of corporation is inherent in the very nature of the corporation and its powers cannot be altered by any other State, and while the law of any other State may permit or forbid the exercise of corporate powers, it cannot increase or diminish the powers themselves or in any way affect their existence (See English Conflict of laws by Schmitthoff at page 339). The Sind University Act has not rendered illegal or void the existing affiliations to the Bombay University of institutions in Sind. It, therefore, follows that the lapse of the notification issued under section 4(A) of the Bombay University Act, 1928 in no way affects the existing affiliations to the Bombay University of the educational institutions in Sind and these affiliations would continue to be valid until an express provision is made in the Sind University Act, prohibiting the operation of the Bombay University in Sind.

Sd/-

O.C. Remembrancer of Legal Affairs.

U.O.R. to E. & I.D. No., 11088 dated 20/4/47

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h. Center